

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement"), effective on this 22nd day of September, 2020 ("Effective Date"), is entered into by and among PBS Coals, Inc. ("PBS"), a Delaware corporation with its principal place of business located at 1576 Stoystown Road, Friedens, Pennsylvania, and David L. Bernhardt, in his official capacity as Secretary of the United States Department of the Interior, and Lanny E. Erdos, in his official capacity as Principal Deputy Director, United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement (collectively, "OSMRE"), each a "Party" and collectively the "Parties."

RECITALS

WHEREAS, PBS operates coal mines, coal preparation plants, and coal refuse disposal facilities in Somerset County, Pennsylvania;

WHEREAS, PBS pays an abandoned mine land reclamation fee ("AML Fee") to OSMRE on each ton of coal produced as required by section 402(a) of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"), 30 U.S.C. § 1232(a), which is deposited in an Abandoned Mine Reclamation Fund;

WHEREAS, on March 9, 2016, OSMRE initiated an audit covering the period from April 1, 2013, through December 31, 2015 (the "2013-2015 Period") to determine if PBS was in compliance with SMCRA's reclamation fee provisions and the implementing Federal regulations at 30 C.F.R. Part 870.

WHEREAS, on July 25, 2016, PBS sought a No Value Determination from OSMRE requesting a finding that PBS did not owe an AML Fee regarding certain coal refuse material from the refuse area at its Shade Creek Preparation Plant (later clarified by PBS to be for the period April 1, 2013, through December 31, 2015);

WHEREAS, following a series of exchanges between PBS and OSMRE [including a March 9, 2017, OSMRE Reclamation Fee Compliance Audit report (the "2017 Audit Report"), concluding that PBS was liable for payment of AML Fees for coal operations at the PBS Shade Creek Preparation Plant and other PBS facilities covering the "2013-2015 Period" and an April 6, 2017, administrative appeal of the 2017 Audit Report to OSMRE's Division of Compliance Management] on whether PBS owed AML Fees for the coal refuse material produced during the 2013-2015 Period, OSMRE issued a decision and revised audit report on November 13, 2019, determining that the coal refuse material produced by PBS did not qualify for a No Value Determination and finding that PBS was therefore required to pay AML Fees for that material;

WHEREAS, on December 13, 2019, PBS filed a Complaint for Declaratory and Injunctive Relief in the United States District Court for the Western District of Pennsylvania, which is docketed as Civil Action No. 3:19-CV-212-SLH (the "Complaint"), challenging OSMRE's November 13, 2019, decision (the "Litigation");

WHEREAS, by letter dated December 31, 2019, OSMRE sent an invoice labeled as Bill Number 20160241067 to PBS for AML Fees, late payment penalties, and interest due for coal production by PBS during the 2013-2015 Period and asserting OSMRE's authority to potentially assess other charges and continuing interest on the unpaid AML Fee amounts in the future (the "2019 Invoice");

WHEREAS, the 2019 Invoice states that PBS owes AML Fees of \$132,892.04, Interest of \$3,348.96, and a Penalty of \$20,092.62, for a total amount of \$156,333.62;

WHEREAS, PBS has not paid the 2019 Invoice because its liability for the AML Fees and other amounts included in that invoice pertains to litigation issues pending in the Complaint;

WHEREAS, the Parties desire to resolve the issues raised in the Complaint, terminate that Litigation, and resolve the 2019 Invoice;

WHEREAS, PBS has not yet paid AML Fees on coal produced during the period January 1, 2016, through December 31, 2019 (the "2016-2019 Period");

WHEREAS, although the 2016-2019 Period is not the subject of the Complaint or Litigation, the Parties desire to agree to a process for determining the amount of AML Fees and interest owed by PBS for the 2016-2019 Period as part of this Agreement;

WHEREAS, PBS believes that its responsibility for AML Fees for the 2016-2019 Period is \$163,572.19 plus interest, which PBS currently estimates as approximately \$6,100, and PBS asserts that, in accordance with OSMRE regulations, PBS' calculation of the AML Fee for the 2016-2019 Period is based on *ad valorem* rates because the value of the coal is less than \$2.80 per ton for all coal refuse material removed from its operations during 2016-2019; and

WHEREAS, OSMRE has not reviewed or audited PBS' calculations of the AML Fees and interest due for the 2016-2019 Period or the basis for those calculations and therefore does not know whether they are correct, but will hereafter complete its review, audit, and calculations as provided below.

NOW, THEREFORE, in consideration of the mutual promises herein, and for such other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. AML Fees for 2013-2015 Period.

a. With respect to the AML Fees for the 2013-2015 Period, OSMRE agrees to accept One Hundred Thousand dollars (\$100,000) (the "2013-2015 Period Settlement Amount") in full satisfaction of all amounts owed by PBS to OSMRE for this period. Within thirty (30) days of the Effective Date of this Agreement, PBS shall submit payment of the 2013-2015 Period Settlement Amount at the Pay.Gov website or by check or money order drawn to the order of "Office of Surface Mining" and mailed to: Office

of Surface Mining, P.O. Box 979068, St. Louis, MO 63197-9000. OSMRE shall notify PBS when it receives the 2013-2015 Period Settlement Amount payment.

b. Payment by PBS of the 2013-2015 Period Settlement Amount, and acceptance by OSMRE of the 2013-2015 Period Settlement Amount, shall be in full satisfaction and resolution of (i) any AML Fees, including any interest, penalties, and other charges owed or owing by PBS concerning or relating to coal production at the facilities identified in the 2017 Audit Report for the 2013-2015 Period, and (ii) the 2019 Invoice.

c. Upon receipt of the 2013-2015 Period Settlement Amount, OSMRE forever waives, releases, and discharges PBS and any of its predecessors, successors, parent companies, subsidiaries, divisions, affiliates, and/or assigns from any and all claims, demands, costs, and liabilities, whether arising at law or in equity, statutory, or common law, relating to (i) any AML Fees, including any interest, penalties, and other charges on such AML Fees, owed or owing by PBS concerning or relating to coal production identified in the 2017 Audit Report for the 2013-2015 Period, and (ii) the 2019 Invoice; provided, however, that OSMRE does not waive any claims for the 2016-2019 Period, other than as provided in Paragraph 3(c) below, or claims arising under criminal provisions of applicable law.

2. Dismissal of the Complaint. Within ten (10) days after PBS receives notice from OSMRE that it has received the 2013-2015 Period Settlement Amount, PBS shall file with the court a voluntary dismissal of the Complaint, with prejudice. If necessary, the Parties shall do all other things, including the execution of additional documents, to cause the Complaint to be dismissed with prejudice.

3. AML Fees for 2016-2019 Period. The Parties agree to take the following steps to determine the amount of AML Fees to be paid by PBS for the 2016-2019 Period:

a. OSM-1 Forms. Within (10) days of the Effective Date of this Agreement, PBS will submit individual Coal Sales and Reclamation Fee Reports (OSM-1 Forms) for each quarter of each year of the 2016-2019 Period, showing the information required pursuant to 30 C.F.R. § 870.15(b) and (c), including tonnage of coal produced from PBS' operations. In addition, pursuant to 30 C.F.R. § 870.14, PBS shall provide documentation supporting the claimed value of the coal that PBS produced. PBS shall also provide a spreadsheet summarizing this information on an annual basis for the years in this period.

b. OSMRE Audit. OSMRE will audit the OSM-1 Forms according to its standard protocol and process, at the end of which it will communicate the audit findings to PBS and issue an audit report. Once OSMRE begins the audit, the Parties recognize that it may take several months for OSMRE to complete the audit, assuming PBS' full cooperation during the audit. The Parties also recognize that there may be conditions beyond OSMRE's control that may extend the time frame of the audit.

c. AML Fee Payment and Right to Appeal. After the audit has concluded, OSMRE will prepare an audit report and send PBS an invoice for the AML Fees and interest that PBS owes. If PBS agrees with OSMRE's audit findings, PBS agrees to pay, within thirty (30) days of receiving OSMRE's invoice, the AML Fees plus interest that OSMRE determines are due from PBS in satisfaction of its obligation for AML Fees for the 2016-2019 Period. If PBS disagrees with OSMRE's determination regarding the amounts of AML Fees and interest that are due from PBS, PBS shall have the right to appeal that determination in the manner provided by law and may postpone payment of the AML Fees and accrued interest until the appeal is resolved. However, interest would continue to accrue until OSMRE receives payment. If PBS pays the full amount of AML Fees and corresponding interest that OSMRE determines are due from PBS, OSMRE agrees to waive late payment penalties and administrative costs for the 2016-2019 Period. However, if PBS appeals OSMRE's determination and is not successful in reducing the amount of the AML Fees owed for the 2016-2019 Period, OSMRE reserves the right to determine whether it should also assess any late payment penalties; provided, however, that the assessment of any such penalties shall be based upon the amount of the AML Fees that are determined to be due over and above the amount which PBS believes is its responsibility as set forth in the Recitals above.

4. No Admission of Liability, Fact, or Law. The Parties' execution of this Agreement and performance hereunder are not, and shall not be construed in any way, in this or any other matter, as an admission of any liability, or as an admission of fact or law, as to any of the matters set forth herein.

5. Binding Effect. All the covenants, representations, consents, waivers, and agreements contained herein shall be binding upon and inure to the benefit of the Parties and their heirs, successors, and assigns.

6. Attorneys' Fees and Costs. Each Party agrees to bear its own attorneys' fees, costs, and expenses arising out of or relating to the Complaint, the 2013-2015 Period, the 2019 Invoice, the 2016-2019 Period, and any other matter referred to in this Agreement.

7. Entire Agreement. This Agreement (including the recitals hereto, which are fully incorporated herein) constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof and may not be amended except by mutually-executed agreement.

8. Modifications. No modification of this Agreement shall be valid unless it is in a writing that is signed by all the Parties hereto.

9. Governing Law. This Agreement shall be interpreted and enforced under applicable federal laws. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that OSMRE is obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

10. Counterpart Execution. This Agreement may be executed by the Parties in any number of original counterparts, all of which together shall constitute one and the same instrument.


11. Authority to Sign. The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agreed to all the terms and conditions of this Agreement.

12. Public Availability. The Parties agree that this Agreement may be made publicly available.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the Effective Date.

For the Plaintiff PBS Coals, Inc.:

Dated: 9/23/2020



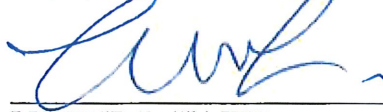
KEVIN J. GARBER
Babst Calland Clements and Zomnir, P.C.
Two Gateway Center, 6th Floor
603 Stanwix Street
Pittsburgh, Pennsylvania 15222
Phone: (412) 394-5453
Fax: (412) 394-6576
kgarber@babstcalland.com

Counsel for the Plaintiff

For Defendants David L. Bernhardt and Lanny E. Erdos:

Dated: 9/22/20

JEAN E. WILLIAMS
Deputy Assistant Attorney General



LUTHER L. HAJEK
Trial Attorney
U. S. Department of Justice
Environment and Natural Resources Division
Natural Resources Section
999 18th Street
South Terrace, Suite 370
Denver CO 80202
Phone: (303) 844-1376
Fax: (303) 844-1350
luke.hajek@usdoj.gov

Counsel for the Defendants